

Members

Rep. Jerry Denbo, Chairperson  
Rep. John Frenz  
Rep. Michael Murphy  
Rep. Phil Hinkle  
Sen. Luke Kenley  
Sen. Teresa Lubbers  
Sen. Lindel Hume  
Sen. Richard Young



## ADMINISTRATIVE RULES OVERSIGHT COMMITTEE

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Authority: IC 2-5-18

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### MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 02, 2001  
**Meeting Time:** 10:00 A.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 125  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 1

**Members Present:** Rep. Jerry Denbo, Chairperson; Rep. John Frenz; Rep. Michael Murphy; Sen. Luke Kenley; Sen. Lindel Hume; Sen. Richard Young.

**Members Absent:** Rep. Phil Hinkle; Sen. Teresa Lubbers.

The chairperson called the meeting to order at 10:10 a.m. and asked the members to introduce themselves. The chairperson explained that the discussion should be specifically about the procedures surrounding Rule 28 of the Alcohol and Tobacco Commission (ATC) and not the content of the rule. A better understanding of the procedures is the goal of the testimony.

The chairperson called on Mr. Clifford Ong, Chairman of the Alcohol and Tobacco Commission, to explain the procedures used in sunseting Rule 28. Mr. Ong indicated that, after research of economic data and after seeking a comparison of the process used in Indiana to that used in other states, the decision was made to let Rule 28 sunset. Even though they determined that no hearing was required to allow the rule to sunset, the Commission decided to hold a hearing on the rule. Simultaneously, the Commission was readopting some rules and allowing others to sunset.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

In response to questions, Mr. Ong indicated that for those rules which were being readopted without modification, the Commission gave notice that the rules were being readopted. Where there were no requests for hearings on those rules, they did not have hearings. They did hold hearings on rules being readopted which had modifications. Mr. Ong further stated that he had discussed the economic impact of allowing the rule to sunset with his Executive Assistant in the Governor's office. The position of the Commission is that the consumers would be better served by allowing Rule 28 to sunset.

In answer to questions about the sunseting process, Mr. Ong stated that it might be better to use the procedures for repealing a rule, including holding a hearing and providing economic impact analysis, when sunseting rules. At the hearing which the ATC held, no one from the public testified. They also had an 800 number where they received about 300 calls in addition to e-mails.

Mr. Ong pointed out that under the provisions of IC 4-22-2.5-4, there is a thirty-day waiting period once an agency indicates that it plans to readopt rules while the notice for a hearing for a new rule is 21 days. He suggested that the General Assembly consider making those time periods consistent.

Mr. Ong discussed two other things which the General Assembly might want to consider. The first is the January 1st date for the sunseting of rules where no action is taken to readopt the rules. It is possible that a readoption could have been started and not finished by January 1. He suggested that there might be a provision to save rules beyond January 1 if a readoption proceeding has been started. His second suggestion dealt with issues where there is a commercial impact. Hearings might be required for sunseting these rules.

The Chairman next called on Representative William Friend. Representative Friend discussed his concerns for the Miami Beverage Company and its forty-five employees. He believes that they will be adversely affected by the sunseting of Rule 28. The company, which has been in business for twenty-three years, has been successful and pays good wages. He feels that the state is taking action adverse to this and similar businesses when it should be encouraging business development. If the owners of Miami Beverage had sold their business a year ago, the value would have been substantially higher than it will be when Rule 28 is sunsetted.

Mr. Mark Little, Little Beverage Company, requested the hearing. (Exhibit 1 - available in Legislative Information Center in Room 230 of the State House.) He structured his business based on the rules in effect before the sunseting of Rule 28. With the sunseting of the rule, he believes that his business will experience a loss of property without due process of law. Rule 28 has, according to Mr. Little, been in effect for twenty-five years, and he is concerned that it was allowed to just sunset without citizen and legislative input. He urged the Committee to ask the Governor to delay the sunseting of Rule 28 until the General Assembly has a chance to review the issue.

Mr. David Bodle, the attorney who represents Little Beverage and Miami Beverage, testified that on six occasions the General Assembly has considered the concept of Rule 28 and has not made changes. He reported, also, that the courts have upheld the concept found in Rule 28. As the sunset law now stands, it is silent on the need for a hearing if a rule is to be sunsetted. He indicated that there should be a one year delay in sunseting Rule 28 to allow for deliberation of the concept. (Exhibits 2 and 3 - available in Legislative Information Center in Room 230 of the State House.)

Mr. Kevin Comerford, Miami Beverage, testified that he had built his business in accordance with laws and rules, including Rule 28. His concern is that his business will be adversely

affected now that Rule 28 will no longer be in effect.

Mr. Randy Zion, representing package liquor stores, told the Committee that the sunset law was not designed to put Indiana businesses out of business and should not be used in that manner.

Mr. Rob Bartels, Martin Supermarkets, expressed his concerns that the sunset of Rule 28 would adversely affect the free market. He believes that the sunset of Rule 28 will impact on consumers' ability to choose. In response to a question, Mr. Bartels indicated that even though the Commission did hold a hearing, it appeared that the decision was made prior to the receipt of public testimony.

Mr. Joe Lackey, Indiana Grocery and Convenience Store Association, said that the legislative intent of the original law was to do away with petty rules on the books. Allowing Rule 28 to sunset is a drastic change in law and overturns twenty-five years of business practices. He said that it appeared that the decision was made before the hearing. He does not think this kind of change in practice is what the General Assembly intended when enacting provisions for sunset rules.

Mr. Mark Carmichael, Indiana Beverage Alliance, was in favor of sunset Rule 28. He said that when Rule 28 was promulgated a large number of wholesalers were put out of business. Indiana has one of the lowest margins of profit. There is a lack of selection for consumers because of the low margin. Even though the margin is low, beer in Indiana is not cheap. Of the surrounding states, Indiana has the second highest price for beer. He did say that there might need to be some changes made to the sunset procedures. In response to questions, Mr. Carmichael said that the legislation was clear as to the need for hearings to readopt rules but not to sunset them.

The chairperson called on John Keeler for input into the process. Mr. Keeler indicated that even though he is with Baker Daniels and represents Miller Brewing Company and Gallo Winery that was not the capacity in which he was at the meeting. He was asked to give some insight into the process. In 1995, Mr. Keeler participated in a select committee to look at the effect of government regulation on commerce in Indiana. There were three findings of that committee. First, it was hard to get agencies to repeal rules. Second, complex rules adopted over time can be in conflict. Third, the regulated community was concerned that many agencies did not go through the rule promulgation process but operated with policy manuals, etc. Those procedures are now included in the Register. As a result of the findings of that committee, the sunset procedure was adopted. The law does give the Governor an out in certain situations by allowing for extending the life of a rule for one year. The burden is placed on the agencies to take some action to keep rules. The sunset of Rule 28 did follow the procedures of the laws. Mr. Keeler pointed out that "emergency" was not defined in the law and could be used at the Governor's discretion.

Mr. Bill Gerding, Market Street Grill in Wabash, said that he had attended the ATC hearing on Rule 28 in August. He thought it was obvious that the members already had their minds made up before the hearing.

The Chairperson solicited comments from the members.

Senator Hume stated that although the sunset procedures had been followed, the General Assembly may want to look at the law and create a category of rules with economic impact which are being sunsetted and allow for a hearing at public request. They could, perhaps, be handled like repealers.

Senator Young stated that from all of the testimony, the procedures had been followed. He

said that the legislation may need to be revisited for rules where there is public concern. He recommended an additional meeting of the Committee for testimony on the sunseting process in general and not specific to this particular rule.

Representative Murphy indicated that he trusted the Chairperson to define future action.

Representative Frenz said that the ATC had done what it was supposed to do and more by holding a hearing which was not required by the law. The sunset law may need to be amended to allow for procedures that might be different if a rule to be sunsetted has fiscal impact.

Senator Kenley said that he thought there should be some study of the procedures for repealers. He indicated that one purpose of the Committee is to provide relief measures when people are adversely affected by actions of government. He stated that government should protect the free market as much as possible. He indicated that he thought the Committee should ask the Governor to exercise the emergency power to delay the sunseting of Rule 28. He thought that the Attorney General should be asked to review this to see if any unfair or unjust taking of property will occur by the sunseting of Rule 28.

Chairperson Denbo said that it was his intention for the Committee to hold an additional meeting. At that time, the Committee will consider the information forwarded to it by Senator Zakas concerning a Department of Revenue matter. (Exhibit 4 - available in Legislative Information Center in Room 230 of the State House.) He wants to ask the Department of Revenue to explain the actions indicated in those letters.

Senator Kenley expressed concern with price gouging on or after September 11 for motor fuel. He wants a report on what happened and to ask the Attorney General if the current law is sufficient to allow the Attorney General to take action.

The meeting was adjourned at 12:40 p.m.